

Secretary's Order No.: **2008-F-0043**

RE: Proposed Amendments to the State of Delaware  
Regulation No. 3907: Deer (2008)

Date of Issuance: September 11, 2008

Effective Date of the Amendment: October 11, 2008

**I. Background:**

A public hearing was held on Monday, August 25, 2008, at 6:30 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the existing Delaware Wildlife Regulation No. 3907: Deer (2008). These proposed revisions would expand hunting opportunities for young hunters, and would clarify regulations related to illegal possession and transport of deer, as well as the regulations related to the tagging of deer.

Two members of the public attended this hearing on August 25, 2008, however, no public comment or questions were received by the Department regarding this proposed action. Proper notice of the hearing was provided as required by law.

After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared her report and recommendation in the form of a Hearing Officer's Memorandum to the Secretary dated September 10, 2008, and that Report is expressly incorporated herein by reference.

## **II. Findings:**

The Department has carefully considered all relevant public input regarding its proposed regulation, and has provided a reasoned analysis and a sound conclusion with regard to the response given to each such comment, as reflected in the Hearing Officer's Memorandum of September 10, 2008, which is attached and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. Proper notice of the hearing was provided as required by law.
2. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
3. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
4. The Department held a public hearing in a manner required by the law and regulations;
5. The Department considered all timely and relevant public comments in making its determination;
6. Promulgation of these proposed amendments would expand hunting opportunities in Delaware for young hunters by dropping the minimum age requirement from 12 years old to 10

years old, thus corresponding with the age at which minors can obtain the Department's hunter certification to hunt deer;

7. Promulgation of these proposed amendments would also clarify the existing regulations related to illegal possession and transport of deer, as well as the regulations related to the tagging of deer here in Delaware;
8. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally that hunt deer;
9. The Department's proposed amendments to Regulation 3907 are adequately supported, not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that
10. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary.

### **III. Order:**

Based on the record developed, as reviewed in the Hearing Officer's Report dated September 10, 2008, and expressly incorporated herein, it is hereby ordered that the proposed amendments to State of Delaware Regulation No. 3907: Deer be promulgated in final form in the customary manner and established rule-making procedure required by law.

**IV. Reasons:**

The promulgation of the Division of Fish and Wildlife Regulation No. 3907: Deer will aide the Department in its ability to expand hunting opportunities for young hunters, and clarify existing regulations related to illegal possession and transport of deer, as well as the regulations related to the tagging of deer.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy and purposes of 7 Del. C., Ch. 60.

/s/ John A. Hughes

John A. Hughes  
Secretary

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## **MEMORANDUM**

TO: John A. Hughes, Secretary

FROM: Lisa A. Vest, Hearing Officer

RE: Proposed Amendments to State of Delaware  
Wildlife Regulation No. 3907: Deer (2008)

DATE: September 10, 2008

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### **I. Background:**

A public hearing was held on Monday, August 25, 2008, at 6:30 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the existing Delaware Wildlife Regulation No. 3907: Deer (2008). These proposed revisions would expand hunting opportunities for young hunters, and would clarify regulations related to illegal possession and transport of deer, as well as the regulations related to the tagging of deer.

Two members of the public attended this hearing on August 25, 2008, however, no public comment or questions were received by the Department regarding this proposed action. Proper notice of the hearing was provided as required by law.

### **II. Summary of Hearing Record:**

At the time of the hearing on August 25, 2008, Kenneth Reynolds, Program Manager with the Department's Division of Fish and Wildlife, offered the Department's exhibits pertaining to this regulatory promulgation, along with a brief explanation to the public with regard to the salient points of the proposed amendments to these regulations.

Mr. Reynolds explained to the attendees at this public hearing that Delaware's deer regulations currently state that it is unlawful to possess or transport any deer that was unlawfully killed. In consultation with counsel, however (and, in the light of the Courts dismissing violators of this regulation due to its language being too vague), the Department is proposing to clarify the language to state that it is unlawful to possess or transport *antlered* deer that have been unlawfully killed, and it is also unlawful to possess or transport *antlerless* deer that have been unlawfully killed.

Additional changes include inserting extra language into Section 7.1.1.5 to add further clarity to that sub-section (regarding a Delaware resident *combination* hunter's choice deer tag and quality buck tag, *or a nonresident quality buck deer tag*). Further changes include the Department's desire to drop the age limit on Youth Day for deer hunting from its current cutoff of 12 years old down to 10 years old. This is being done because minors can receive hunter certification by taking the deer hunting safety class at 10 years of age, and so the age limit is being reduced to correspond with that at this time.

For brevity's sake, and for the Secretary's review, a copy of the Department's proposed amendments to these regulations is attached hereto as Attachment "A" and is expressly hereby incorporated into this report.

It should also be noted that the Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally that hunt deer.

### **III. Conclusions and Recommendations:**

Based on the above discussion, I conclude that the Department has provided appropriate reasoning regarding the need for these proposed changes to Delaware's Wildlife Regulation 3907: Deer, and has thoroughly addressed all public questions and/or comments provided during the various phases of the record developed in this matter. Accordingly, I recommend promulgation of these proposed amendments in the customary manner provided by law.

Further, I recommend the following findings:

1. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
2. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
3. The Department held a public hearing in a manner required by the law and regulations;
4. The Department considered all timely and relevant public comments in making its determination;
5. Promulgation of these proposed amendments would expand hunting opportunities in Delaware for young hunters by dropping the minimum age requirement from 12 years old to 10 years old, thus corresponding with the age at which minors can obtain the Department's hunter certification to hunt deer;

6. Promulgation of these proposed amendments would also clarify the existing regulations related to illegal possession and transport of deer, as well as the regulations related to the tagging of deer here in Delaware;
7. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally that hunt deer;
8. The Department's proposed amendments to Regulation 3907: Deer are adequately supported, not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that
9. The Department shall submit the proposed regulation as a final regulation to the Delaware Register of Regulation for publication in its next available issue, and shall provide written notice to the persons affected by the Order.

\_\_\_\_\_/s/ Lisa A. Vest\_\_\_\_\_.  
LISA A. VEST  
Hearing Officer



/ahear/FW Sect. 3907.Reg.Amdmts.Deer.2008